



CASE ANALYSIS: STATE OF TAMIL NADU V. GOVERNOR OF TAMIL NADU

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INTRODUCTION

Wherever there are different political parties ruling at the Centre and the State, there is a tussle between the elected governments and the Governor due to the clash of powers. It has been observed that in some situations, the Governor appears to be powerful than the government. However, this is not a new thing. In the past, too, there have been differences or disputes between state governments and the Governor, but the extent to which this has progressed in the present times is harmful for the peaceful centre- State relations. The Supreme Court has recently examined the power of the Governor to return the Bills to the Legislative Assembly in case he withholds the assent to them under Article 200 of the Constitution of India. In the recent times, the constitutional crisis is emerging in the non- BJP ruled states due to the differences with the Centre and elected Governments. The judgment came in the light of the ongoing tussle between the Tamil Nadu Governor and Government of Tamil Nadu.

FACTS

The issue revolved around the power of the Governor to withhold or grant the assent to the bills passed by the Legislative Assembly of the State under Article 200 and 201 of the Constitution of India. The Tamil Nadu Legislative Assembly enacted several bills and forwarded the same to the Governor for the grant of assent under Article 200 of the Constitution of India. There were four categories of the cases which were forwarded to the Governor for his assent. The first category of the cases relates to the bills empowering the State Government to appoint the Vice- Chancellor of the Universities instead of the Governor. The second categories of the case related to the bills which seek the sanction for the prosecution of the public servants for various crimes involving the acts of moral turpitude under the Prevention of Corruption act, 1988. In addition to this, various bills pertain to the appointment of the members for the Tamil Nadu Public Service Commission.¹

The Governor of the State did not take any action on the Bills for a long period of time. Some of the Bills were delayed for more than one year by the Governor. Due to the inactive action on the part of the Governor of the State, the Tamil Nadu Legislative Assembly has filed the writ petition in Oct 2023. After the issuance of the notice by the Court, the Governor withheld the assent to the 10 bills and was returned to the State Legislature. He did not send the message for the reconsideration of the Bills to the Legislature of the State. Two of the Bills were reserved for the consideration of the President. The Legislature of the State has passed these 10 Bills again without any material change in them and were forwarded to

the Governor for his assent. The Governor reserved the Bills which were passed again by the State Legislative Assembly for the consideration of the President. He made the observation that the Bills were violative of the Entry 66 of the Union List (List 1, VII Schedule) of the Constitution of India. The State Government contended that the action of the Governor to refer the Bills for the consideration of the President was violative of Article 200 of the Constitution of India and impeded with the functioning of the Legislative assembly of the State.²

ISSUES RAISED

- Actions available to the Governor under Article 200 of the Constitution of India
- Whether the Governor can reserve a bill for the consideration of the President at the time when it is presented to him for assent after being reconsidered by the Legislative Assembly
- Whether there is an express constitutionally prescribed time-limit within which the Governor is required to give or withhold his assent to the Bills
- Whether the Governor under Article 200 of the Constitution can act only with the aid and advice of the Council of Ministers
- Whether the exercise of discretion by the Governor in discharge of his functions under Article 200 could be subjected to judicial review
- Manner in which the President under Article 201 of the Constitution is required to act once a bill has been reserved for his consideration by the Governor under Article 200 of the Constitution.

JUDGMENT

The Supreme Court observed that the action of the Tamil Nadu Governor in withholding the assent to the ten bills which were kept pending since January 2020 and reserving them to the President after they were re- enacted by the Legislature of the State is illegal and erroneous and were liable to set aside. Any consequential steps which might have been taken by the President on these bills were also declared bad in law. The Court declared that the ten Bills would be deemed to have received the assent of the Governor when they were presented to the Governor second time when they were passed again by the State Assembly.

Court held that the Governor did not act with the bona fide intention as the bills were sent to the President after the Governor kept them pending for a extended period of time and were reserved for the President soon after the **judgment in Punjab** case which held that the Governors cannot veto the

bills by delaying the assent to the Bills. It was further held that the “there is no pocket veto or absolute veto under the Indian Constitution”.

Moreover, the Court held that “If the Governor withholds the assent to the bill, then they must be sent to the Assembly”. It is not open for the Governor to reserve a Bill for the President after the bills have been passed again by the Assembly. The only exception is when the reconsidered bill is different from the first version.

The Court further laid down the timelines for the President and the Governor to take action on the Bills presented by the Legislative Assembly of the State. Judicial review will be attracted in case of the failure to comply with the prescribed timelines. The Governor has to communicate the decision on the Bills within the period of one month. In case the Governor decides to withhold the assent, he must return the Bill within the maximum period of 3 months. If the Bills are reserved for the consideration by the president, he shall make a reservation within the maximum period of 3 months. In addition to this, if the Governors refer the Bills to the President after the bills have been reconsidered by the Assembly, he must grant assent to the Bills within the period of 1 month.

Court remarked that “While exercising the powers under Article 200 of the Constitution of India, the Governor must act according to the aid and advice of the Council of Ministers. He does not have any discretionary powers in regards to the assent of the Bills. The Governor can only exercise the discretion when the Bills affect the powers of the Supreme Court and the High Court.

CASE ANALYSIS

The Supreme Court in its historic decision exercised the powers under Article 142 of the Constitution of India and declared the 10 Bills are deemed to have received the assent of the Governor. The Court reinterpreted the provisions of Article 200 and 201 of the Constitution of India and set the new timelines for the Governor and the President to take action on the Bills passed by the Legislative Assembly of the State. Article 200 of the Constitution provides the procedure by the Governor in case of assent to the Bills. It provides that “The Governor has the three options when a Bill is presented to him by the Legislative Assembly. The Governor can either give the assent or withholds the assent or he can reserve the bill for the consideration of the President. The Article uses the word “shall” thereby implying that it is mandatory for the Governor to choose from the three courses available to him under Article 200 of the Constitution of India.

The first proviso of Article 200 states that the Governor can return the Bill “as soon as possible” to the legislature of the State requesting the Houses to reconsider the Bill. If the Bill is passed again with or without the amendments, the Governor is bound to give his assent. The veto power of the Governor is overridden in this scenario as the Governor cannot withhold the assent in case the bills have been reconsidered and sent back to the Governor by the state legislature for the assent. Moreover,

second proviso to Article 200 states that the Governor can refuse the assent to the Bills in case he decides to reserves the Bills for the consideration of the President. The Bills can be reserved for the consideration of the President in case the Bills derogate from the powers of the High Court as to endanger its position.

The Court also interpreted the provisions of Article 163 of the Indian Constitution. Article 163 of the Constitution of India provides that “There shall be the Council of Ministers with the Chief Minister at its head to aid and advice the Governor in the exercise of the functions under the Constitution”. The Governor can exercise the discretion only when the Constitution expressly or by implied provisions permits the discretion. Even the discretionary powers of the Governor are subjected to judicial review to check that he uses the power in accordance with the provisions of the Constitution. In regard to Article 200 of the Constitution, it is mandatory for the Governor to follow the advice of the Council of the Ministers.

CONCLUSION

The Supreme Court through its judgment curbs the misuse of gubernatorial discretion to stall state legislatures, reaffirming that Governors are constitutional heads, not political actors. It emphasizes the primacy of the legislative process and limits executive overreach. The judgment also sets a precedent for similar cases in states like Kerala, West Bengal, Telangana, and Punjab, where Governors have delayed assent to Bills. The judgment can be seen as a boost for the state governments and the legislative autonomy. It tilts the balance a bit from the Centre which has the power to appoint the Governors towards the elected state governments reinforcing the federal principle. On the other hand, the decision of the Apex Court can be seen as the judicial overreach thereby undermining the principle of separation of the powers. The Court in the exercise of the extraordinary powers under Article 142 of the Constitution interfered with the functioning of the state executive.

REFERENCES

1. Pendency of the Bills before the Tamil Nadu Governor, SUPREME COURT OBSERVER, (April 14, 2025, 13:15 P.M.), <https://www.scobserver.in/cases/pendency-of-bills-before-tamil-nadu-governor-the-state-of-tamil-nadu-v-governor-of-tamil-nadu/>.
2. RR Singh, Critical Analysis of Tamil Nadu v. Governor Case, LAW TREND (April 14, 2025, 13:15 P.M.), <https://lawtrend.in/supreme-court-judicial-activism-overreach-separation-of-power/>